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No. 91-916

Supreme Court, U.S.  
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**In the Supreme Court of the United States**

OCTOBER TERM, 1991

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STEVEN FLETCHER COCHRAN, PETITIONER

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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### **QUESTION PRESENTED**

Whether the stop of petitioner's car and the subsequent seizure of an ammunition clip and a firearm from it violated the Fourth Amendment.



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## **OPINION BELOW**

The opinion of the court of appeals (Pet. App. 1-10) is reported at 939 F.2d 337.

## **JURISDICTION**

The judgment of the court of appeals was entered on July 17, 1991. A petition for rehearing was denied on September 6, 1991. Pet. App. 11-12. The petition for a writ of certiorari was filed on December 5, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **STATEMENT**

Following a plea of guilty in the United States District Court for the Eastern District of Michigan, petitioner was convicted of possessing an unregistered

firearm not identified by its serial number, in violation of 26 U.S.C. 5861(d). Following a jury trial in the same court, he was convicted of interstate transportation of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). He was sentenced to concurrent terms of 52 months' imprisonment. The court of appeals affirmed. Pet. App. 1-10.

1. On February 21, 1990, after receiving information that petitioner was a drug dealer, law enforcement agents began surveillance of his residence. The agents observed petitioner take a thickly packaged rectangular box from his coat, place it in the trunk of his car, and drive to the residence of George Reid. The agents, who were experienced investigators, believed that petitioner's box contained drugs, because kilogram quantities of cocaine are frequently transported in packages of that style and shape. The agents also knew that petitioner had numerous arrests for carrying weapons in his car, including one incident in which Reid was a passenger. Pet. App. 19-32.

Based on their observations, the agents obtained a search warrant for petitioner's residence and began administrative forfeiture proceedings against petitioner's car. On February 23, 1990, the agents arrived at petitioner's residence to execute the search warrant. To promote a safe and orderly search, the agents decided to seek petitioner's assistance in executing the warrant. They knew that he carried arms and kept a guard dog on the premises. Before the agents approached the house, however, petitioner drove away from the premises in his car. Pet. App. 2, 33-34.

Two agents stopped petitioner's car and ordered him to step outside. Petitioner quickly moved his right arm, causing the agent on the driver's side to

open the car door and repeat his order for petitioner to exit. When petitioner continued his motion, the agent pulled petitioner out of the car, while the other agent opened the car's glove box, causing a loaded ammunition clip to fall out. The agents knew that petitioner, as a convicted felon, was not entitled to possess a firearm or ammunition. The agents arrested petitioner and later searched the car and seized an unregistered machine gun from the trunk. Petitioner filed a pretrial motion to suppress the evidence seized from his car. The district court denied the motion. Pet. App. 2-3, 34-36, 76-79, 100-102, 155-161.

2. The court of appeals affirmed petitioner's conviction, rejecting his contention that the evidence seized from his car should have been suppressed. The court concluded that under *Michigan v. Summers*, 452 U.S. 692 (1981), the agents properly stopped petitioner, after he departed from his residence, to seek his assistance in executing the warrant. The court rejected petitioner's argument that the agents manipulated the circumstances to permit them to search petitioner's car. Pet. App. 3-5. The majority also concluded that the search of the glove box in petitioner's car was justified by the agents' concern for their own safety, which was precipitated by petitioner's threatening arm movement, and that the discovery of the ammunition clip gave the agents probable cause to search the car and to seize the clip and the firearm. *Id.* at 6.

Judge Wellford dissented. In his view, the decision in *Michigan v. Summers* did not permit law enforcement agents to detain petitioner once he was away from his residence or to return him to the premises to assist in executing the search warrant. Pet. App. 8-10.



## ARGUMENT

Petitioner contends (Pet. 12-21) that the government violated the Fourth Amendment by stopping his car and subsequently seizing a machine gun and ammunition clip from it. In particular, he maintains that the court of appeals misapplied *Michigan v. Summers*, 452 U.S. 692 (1981), because the right of law enforcement agents armed with a search warrant for a residence to restrain an occupant from leaving the premises does not extend to detaining a person who has already driven away. See Pet. 15-17. There is no need to reach that issue, however, because the law enforcement agents had probable cause—or at least reasonable suspicion—to stop petitioner while he was in his car, based on the information supporting the search warrant. Furthermore, even if there is a question under *Summers* whether the agents could force petitioner to return to his residence, they certainly were entitled, at the least, to stop petitioner to request his assistance in executing the warrant. Thus, petitioner was lawfully stopped, and his subsequent threatening motion justified the search of his car.

1. Law enforcement agents can arrest a suspect for a felony in a public place without a warrant if they have probable cause to believe that the suspect has committed a crime. *United States v. Watson*, 423 U.S. 411 (1976). Probable cause exists when the facts and circumstances within the arresting officers' knowledge are sufficient for a reasonable person to believe that the suspect has committed or is committing a crime. *Brinegar v. United States*, 338 U.S. 160, 175-176 (1949). Here, the law enforcement agents were entitled to stop petitioner's car because they had probable cause, based on the information justifying the search warrant, to believe that peti-

tioner was engaged in drug trafficking. Because the agents had probable cause to arrest petitioner, they were entitled to open petitioner's glove compartment as a search incident to arrest to prevent him from reaching for a weapon. *New York v. Belton*, 453 U.S. 454 (1981). And upon discovery of the ammunition clip, the agents were entitled to search the trunk and seize the machine gun. *United States v. Ross*, 456 U.S. 798 (1982).

2. Even if the agents' information did not establish probable cause to arrest petitioner, it gave them reasonable suspicion to stop petitioner's car for further investigation. See, e.g., *United States v. Sharpe*, 470 U.S. 675, 682-688 (1985). Alternatively, the agents were entitled, under the Fourth Amendment's standard of reasonableness, to stop petitioner to request his assistance in executing the search warrant. See, e.g., *id.* at 682 ("we examine 'whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place'").

Under either rationale, when petitioner—a person who was known to have an affinity for firearms—moved his arm suddenly upon hearing the agents' command, the agents properly concluded that petitioner was armed and dangerous. See, e.g., *United States v. Paulino*, 850 F.2d 93, 97 (2d Cir. 1988), cert. denied, 490 U.S. 1052 (1989); *United States v. Williams*, 822 F.2d 1174, 1180 n.62 (D.C. Cir. 1987). To prevent petitioner from drawing a firearm, the agents properly restrained petitioner and opened the car's glove box. *Michigan v. Long*, 463 U.S. 1032 (1983). And after the agents discovered the ammunition clip, they had probable cause to search the rest of petitioner's car and to seize the

machine gun. See *United States v. Ross, supra*. Thus, the government's search of petitioner's automobile was lawful under the Fourth Amendment, irrespective of whether this Court's decision in *Summers* would have allowed the government to return petitioner to his residence while the search was conducted.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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